

Chair's Reference Paper**Rev. 1¹**

GREEN BOX

Structure for Discussion***Introduction***

1. In our discussion of the reference paper, it was reaffirmed that the key objective of the review is to ensure that programmes notified in the Green Box are indeed Green, i.e. cause not more than minimal trade-distortion or effects on production. I sensed there is indeed a preparedness to make genuine efforts to see if it can be feasible to make the provisions applicable in such a way as to ensure that particular situations of developing countries are taken into account.
2. I have already underlined in my first reference paper on Green Box that, in line with the guidance provided in the Hong Kong Ministerial Declaration, there has been a genuine openness to changes to paragraph 2 – General services – to ensure that the programmes of developing countries are effectively covered. We have had specific textual proposals to this effect. I believe it is just about time that I could put those proposals in a working draft.
3. In addition, I sense a broad support for enhanced monitoring and surveillance with respect to Green Box measures. There is clearly a need for more effective notifications system and examination of notifications as it would greatly help ensure that criteria of the Green Box are being met. We need to discuss the issues of improved transparency and notifications requirements in earnest. On that basis I would like to move to a working draft.
4. We need now to scope out the overall sense of direction with respect to these and other amendments that have been put forward. Some categories, for example the concept of "fixed and unchanging" base periods or changes to take account of special needs of developing countries, including the "newcomer" issue, would be well suited for this exercise.
5. As I indicated in my previous paper, we have yet to enter into technical discussions of the proposals put forward especially with respect to paragraphs 7 to 13. I have not felt that we have yet secured a serious preparedness to go into this detailed discussion. Are we to do it or not? It cannot happen constructively if there is no real willingness to engage in it. We have had a technical discussion on export credits. Are we ready to do it here for the Green Box?
6. With this in mind, I thought it might help you decide whether you wanted to get into this by putting all proposals into a running list of proposed changes which is attached to this paper (see Appendix). Where there was considerable overlap (like in the case of subparagraph (b) of paragraph 11), I have tried to merge the suggestions into one for purposes of clarity – and hopefully without totally travestying the uniqueness of particular proposals. In other cases, I have felt it safer simply to indicate alternative language as bracketed text. In most of the cases I have just reproduced the proposals for ease of reference. As I say, I am not proposing any of this as Chair: it is provided as a tool precisely in order to help you to decide whether you are even going to have this kind of detailed discussion. I thought it might be useful if you had at least some sense of what that kind of detailed discussion would need to grapple with. And, as with so much else, there is not a lot of time to go

¹ This is a revision of the Chair's Reference Paper issued on 12 April 2006, under n°2650.

through all of this. Seeing this laid out may help you decide this is all too much and we should give it away. Alternatively it might help you feel that this is all ultimately manageable with a bit more serious technical work. Let's make up our minds one way or another. If it is to be done, it needs to be done quickly. If not, let's make it clear that we are going to cut our losses, as it were, on all or some of these paragraphs.

Public stockholding for food security purposes (paragraph 3)

7. In my previous reference paper I had gone to some lengths to explain my views with respect to the proposed changes and explore some possible direction of how we might approach this issue. I did not detect any outright rejection of this particular approach, although it was pointed out that more has been sought than just the exemption from the need to notify when payments do not exceed the *de minimis* threshold. I believe we should have another look at what can reasonably be done here.

Domestic food aid (paragraph 4)

8. Similarly with respect to paragraph 4, I had tried to put the issue at hand into perspective. I think it was useful but we have yet to enter into detailed discussion of possible ways of how we are going to consider this issue.

Direct payments to producers (paragraph 5)

9. It appears that most difficulties await us with respect to amendments to paragraphs 5 to 13 of Annex 2. However, I consider that there are important elements of convergence to build upon despite differences.

10. One such is the concept of "fixed and unchanging" base periods. It is being seen as a tool to avoid re-coupling of direct payments through frequent changes to the base period, especially as it relates to paragraph 6. There is an important openness to deal with this as it relates to that paragraph but it is to be noted that concerns have been raised that introduction of the fixed and unchanging base periods for payments under paragraphs 11 and 13 may not be suitable.

11. On paragraph 6 at least there is certainly openness to discuss this issue further. It was noted that there is a recognition that updating of bases and yields can create some pervasive effects. At the same time, it was also pointed out that there is a need to provide flexibility for the evolution of farm programmes and for practical adjustments. I would hope that we could fine-tune this concept.

12. In addition, I wonder if there would not be merit to discuss in more detail any new monitoring and surveillance procedures. I would hope that we could pursue this through a detailed technical discussion in order to assess the extent to which enhanced notification requirements would be helpful and therefore this issue could be advanced further.

13. I do note of course that while there appears to be no disagreement about the value of any enhanced monitoring and surveillance, the view is, however, that this approach needs to be accompanied by improved disciplines. But that clearly is not an obstacle to dealing with the issue of notification and surveillance on its intrinsic merits.

14. As regards changes to direct payments sought by developing countries to address their specific concerns, it was underlined again that the intention is not to overhaul the Green Box but to make the Green Box more accessible to developing country Members. We should keep this point in mind as we go through the proposals whether they relate to experimental and pilot programmes or are intended to address data, bookkeeping and institutional deficiencies or specific needs and situations of developing countries.

Decoupled income support (paragraph 6)

15. I have already flagged the main areas of divergence. During our discussion, it was clarified that changes to paragraph 6 have been sought to provide assurances that inputs are not required to be in agricultural use in order to receive payments but this is not to be understood as an opposition to using "best farm practices". Rather, it has been clarified that the objective here is that land must not be in "commercial agricultural use".

16. I had also mentioned the "newcomer" issue and the need to perhaps approach it systematically as it is relevant to various direct payments under Annex 2 and may be relevant generally, not just to developing country Members. This is one of the issues that will need to be approached pragmatically.

Paragraphs 7 - 13

17. I felt that it was usefully pointed out that there is a need to distinguish the changes sought with respect to paragraphs 7 and 8 and those pertaining to paragraphs 11 to 13.

18. As regards amendments suggested by developing countries in paragraphs 7 and 8, some relate, for example, to the special needs of developing countries as many of them do not have income data at the farm-household level. Hence the need to make the criteria more operational as data and bookkeeping requirements often exceed the institutional capacity of many developing countries. It seems that the changes in favour of developing countries would focus on addressing the needs in administration in paragraph 7 and 8. For example, it would seem reasonable to explore whether in such situations data could perhaps be provided on a more aggregate basis.

19. Regarding the base period, the main focus in paragraphs 7 and 8 is that in the case of such payments, the current base periods are too short to be effective for these kinds of programmes and there have been indications that it is not possible to meet the current requirements. There has been a suggestion that we extend the base period to five years as this would be more representative of the market conditions. As regards crop insurance programmes, it has been suggested that the base period should be actuarially sound rather than based on a specified period. These suggestions are in a certain sense dangling – no strong disagreement on the specifics, but one has the sense that that is as much as anything reflective of a more generalised/non-specific reluctance to make any changes. We need to clarify whether we really are prepared to go this way or not.

20. Much the same could be said for the proposal to add a new subparagraph to permit full compensation for destruction of crops or animals to control or prevent the spread of pests or diseases. I think we should look seriously now at paragraphs 7 and 8, assess whether we are ready to contemplate any change whatsoever and, if so, fine-tune the language with the view to finding a solution acceptable to all.

21. With respect to changes regarding paragraph 11, there is currently no agreement to make the amendments that would require that structural disadvantages be clearly defined nor to eliminate the link with the use of factors of production or inputs for production. The issue of "fixed and unchanging" base period was already referred to earlier.

22. Members have yet to discuss the proposed changes to paragraph 12, especially the apparent exemption of developing countries from criteria under this paragraph. As regards the second set of amendments, there is opposition to making these changes, especially with respect to the suggested deletion of the reference to "loss of income". In the view of some Members, complying with environmental programmes may entail both the extra costs as well as loss of income.

23. Regarding paragraph 13, there seems to be no specific disagreement with the amendment to exempt developing countries from the requirement that the disadvantaged area be a clearly designated contiguous geographical area with a definable economic and administrative identity. Other

amendments proposed here have already been flagged when I referred to the issue of "fixed and unchanging" base period or the "newcomer" issue.

Monitoring and surveillance

24. It is generally accepted that appropriate monitoring and surveillance procedures will need to be established. One suggestion is for a new Sub-Committee on Monitoring and Surveillance to undertake various tasks comprising of a review of notifications, peer review, assessment and evaluation, reporting and surveillance. Another proposal is to enhance the existing format of notifications and ensure timely submissions, including by means of a penalty in Current Total AMS for Members with overdue notifications. Also, in addition to a regular review of notifications by the Committee on Agriculture, in-depth examinations of each Member's notifications (both Table DS:1 and Table DS:2) would be carried out on a rolling basis, with the three Members with the highest amounts of support being reviewed every year.

Appendix*

ANNEX 2

Working Document of proposed changes to paragraphs 7 through 13

Government financial participation in income insurance and income safety-net programmes (paragraph 7)

(i) Modify subparagraphs (a) and (b) as follows:

- (a) Eligibility for such payments shall be determined by an income loss, taking into account only income derived from agriculture, which exceeds 30 per cent of average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry, ***or in the case of a developing country Member, in accordance with specific criteria which shall be defined in national legislation***⁹. Any producer meeting this condition shall be eligible to receive the payments.

Text of footnote 9: ***Includes administrative orders and regulations made by the designated competent authorities.***

- (b) The amount of such payments shall compensate ***only up to*** ~~for less than~~ 70 per cent of the producer's income loss in the year the producer becomes eligible to receive this assistance. ***In the case of a developing country Member, compensation shall only be up to a certain proportion of the producer's income which shall be defined in national legislation***¹⁰.

Text of footnote 10: ***Includes administrative orders and regulations made by the designated competent authorities.***

(ii) Add two footnotes to the existing subparagraphs (a) and (b):

- (a) Eligibility for such payments shall be determined by an income loss¹, taking into account only income derived from agriculture, which exceeds 30 per cent of average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. Any producer meeting this condition shall be eligible to receive the payments.

Text of the footnote 1: ***Developing countries may determine the income loss on an aggregate basis of the agriculture sector as a whole (i.e. not on an individual basis) at either a national or regional level.***

- (b) The amount of such payments shall compensate for less than 70 per cent of the producer's income loss² in the year the producer becomes eligible to receive this assistance.

Text of footnote 2: ***If developing countries have based the eligibility criteria in 7(a) above on an aggregate basis of the agriculture sector as a whole, the total amount of payments shall compensate for less than 70 per cent of the aggregate income loss of the agriculture sector as a whole.***

* The following symbols have been used:

- 1) Italicised text in bold indicates proposed additions/revisions and strike-out indicates proposed deletions of the relevant provisions of the Agreement on Agriculture.
- 2) Square-bracketed text indicates alternative proposals.

- (iii) Modify the existing subparagraphs (a) and (b) as follows:
- (a) Eligibility for such payments shall be determined by an income loss *of the farm enterprise as a whole*, taking into account only income derived from agriculture, which exceeds 30 per cent of *the reference income, which is* average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding ~~three~~ *five*-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. Any producer meeting this condition shall be eligible to receive the payments *from the government*.
 - (b) The amount of such payments *by governments* shall ~~compensate for less than 70 per cent of the producer's income loss~~ in the year the producer becomes eligible to receive this assistance *raise the producer's reference income to no more than 70 per cent of the producer's reference income*.
- (iv) Modify the existing subparagraphs (a), (b) and (c) as follows:
- (a) Eligibility for such payments shall be determined by an income loss, taking into account only income derived from agriculture, which exceeds 30 per cent of *the reference income, which is* average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding ~~three~~ *five*-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. Any producer meeting this condition shall be eligible to receive the payments *from the government*.
 - (b) The amount of such payments *by governments* shall *in the year the producer is eligible to receive this assistance, raise the producer's income to no more than 70 per cent of the producer's reference income*. ~~compensate for less than 70 per cent of the producer's income loss in the year the producer becomes eligible to receive this assistance.~~
 - (c) The amount of any such payments shall relate solely to income *derived from agriculture of the farm enterprises' as a whole*; it shall not relate to the type or volume of production (including livestock units) undertaken by the producer; or to the prices, domestic or international, applying to such production; or to the factors of production employed.
- (v) Modify the existing subparagraphs (a) and (b) as follows:
- (a) Eligibility for such payments shall be determined by an income loss, taking into account only income derived from agriculture, which exceeds 30 per cent of *the reference income, which is* average gross income or the equivalent in net income terms (excluding any payments from the same or similar schemes) in the preceding ~~three~~ *minimum five*-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. Any producer meeting this condition shall be eligible to receive the payments *directly or indirectly from the government*.
 - (b) The amount of such payments, *directly or indirectly from the government, shall, shall* ~~compensate for less than 70 per cent of the producer's income loss~~ in the year the producer becomes eligible to receive this assistance *contribute only up to 70 per cent of the producer's reference income*.

Payments (made either directly or by way of government financial participation in crop insurance schemes) for relief from natural disasters (paragraph 8)

- (i) Modify subparagraphs (a) and (b) as follows:
- (a) Eligibility for such payments shall arise only following a formal recognition by government authorities that a natural disaster or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds

30 percent of the average of production in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry, *or in the case of a developing country Member, in accordance with specific criteria which shall be defined in national legislation*¹¹.

Text of footnote 11: *Includes administrative orders and regulations made by the designated competent authorities.*

- (b) Payments made following a disaster shall be applied only in respect of losses of income, ***crop***, livestock (including payments in connection with the veterinary treatment of animals), land or other production factors due to the natural disaster *or other disaster* in question.
- (ii) Add a footnote to the existing subparagraph (a):
 - (a) Eligibility for such payments shall arise only following a formal recognition by government authorities that a natural disaster or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss³ which exceeds 30 percent of the average of production in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry.

Text of footnote 3: *Developing countries may determine the production loss of the affected sector(s) or region(s) on an aggregate basis.*

- (iii) Modify subparagraph (b) as follows:
 - (a) Eligibility for such payments shall arise only following a formal recognition by government authorities that a natural disaster or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30 percent of the average of production in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. *In the case of developing country Members, payments for relief from natural disasters may be provided to producers when the estimated production loss is less than 30 per cent of the average of production in the preceding three-year period or a three-year average based on the preceding five-year period.*
- (iv) Add to the existing subparagraph (a) and modify the existing subparagraph (b) as follows:
 - (a) Eligibility for such payments shall arise:
 - (i) *In the case of direct payments related to disasters* only following a formal recognition by government authorities that a natural or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on the territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30 per cent of the average of production in the preceding ~~three~~ **five**-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry.
 - (ii) *In the case of government financial participation in crop or production insurance schemes, eligibility for such payments shall be determined by a production loss which exceeds 30 per cent of the average of production in a period demonstrated to be actuarially appropriate.*
 - (iii) *In the case of the destruction of animals or crops to control or prevent pests, diseases, disease-carrying organisms or disease-causing organisms named in national legislation or international standards, the production loss may be less than the 30 per cent of the average of production referred to above.*

- (b) Payments made following a disaster shall be applied only in respect of losses of income, **crops**, livestock (including payments in connection with the veterinary treatment of animals), land or other production factors due to the natural disaster in question.
- (v) Add to the existing subparagraph (a) and modify the existing subparagraphs (b) and (d) as follows:
- (a) **Eligibility for such payments shall arise:**
- (i) ***In the case of direct payments related to disasters*** ~~Eligibility for such payments shall arise~~ only following a formal recognition by government authorities that a natural or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on the territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30 per cent of the average of production in the preceding ~~three~~ **five**-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry.
- (ii) ***In the case of government financial participation in crop insurance schemes, eligibility for such payments shall be determined by a production loss which exceeds 30 per cent of the average of production in an actuarially appropriate period.***
- (iii) ***In the case of the destruction of animals or crops to control or prevent diseases named in legislation or international standards, the production loss may be less than the 30 per cent of the average of production referred to above.***
- (b) Payments made ~~following a disaster~~ **under Paragraph 8** shall be applied only in respect of losses of income, livestock (including payments in connection with the veterinary treatment of animals), land or other production factors **or destruction of animals or crops** due to the ~~natural~~ disaster in question.
- (d) Payments made ~~during a disaster~~ **under Paragraph 8** shall not exceed the level required to prevent or alleviate further loss as defined in criterion (b) above.
- (vi) Add to the existing subparagraph (a) and modify the existing subparagraphs (b) and (d) as follows:
- (a) Eligibility for such payments shall arise:
- (i) ***In the case of direct payments, eligibility*** shall arise, only following a formal recognition by government authorities that a natural or like disaster (including disease outbreaks, pest infestations, nuclear accidents, and war on the territory of the Member concerned) has occurred or is occurring; and shall be determined by a production loss which exceeds 30 per cent of the average of production in the preceding **minimum five-year** ~~three-year~~ period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry.
- (ii) ***In the case of government financial participation in production insurance schemes, eligibility shall be determined by a production loss which exceeds 30 per cent of the average of production in a period that is actuarially appropriate.***
- (iii) ***Where payments under this paragraph are made in respect of the destruction of animals or crops to control or prevent a disease identified by an appropriate authority, may arise when the production loss is less than the 30 per cent of the average of production referred to in paragraph 8(a)(i) or 8(a)(ii), as applicable.***
- (b) Payments made **under this paragraph** ~~following a disaster~~ shall be applied only in respect of losses of income, livestock (including payments in connection with the veterinary treatment of animals), land or other production factors due to the natural disaster **or destruction of animals or crops** in question.

- (d) Payments made ***under this paragraph*** ~~during a disaster~~ shall not exceed the level required to prevent or alleviate further loss as defined in criterion (b) above.

Structural adjustment assistance provided through investment aids (paragraph 11)

- (i) Modify the existing subparagraph (b) as follows:
- (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after ***a fixed and unchanging*** base period, other than as provided for under criterion (e) below. ***Developing country Members who have not previously [made use of this type of payment, and thus have not] notified, shall not be precluded from establishing an appropriate base period¹², which shall be fixed and unchanging and shall be notified.***

Text of footnote 12: ***Developing countries Members may not have the capacity to fully assess the impact of innovation in their agricultural policies. Accordingly, the base period of a time-limited experimental or pilot programme may not be taken as the fixed and unchanging base period for the purposes of this paragraph.***

- (ii) Add at the end of subparagraph (a) and modify the existing subparagraph (b) as follows:
- (a) ***... Such structural disadvantages must be clearly defined.***
- (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production, ***[the use of factors of production,] or inputs into the production*** (including livestock units) undertaken by the producer in any year after ***a fixed and unchanging historical*** ~~the~~ base period, other than as provided for under criterion (e) below. ***The base period shall be notified.***

Payments under environmental programmes (paragraph 12)

- (i) Add the following subparagraph (c) to the existing paragraph 12:
- (c) ***The conditions spelt out in paragraphs 12 (a) and (b) above shall not apply to payments made by developing countries.***
- (ii) Modify the existing subparagraph (b) as follows:
- (a) The amount of payment shall be limited to the extra costs ~~or loss of income~~ ***involved in complying with the government programme and not be related to or based on the volume of production.***

Payments under regional assistance programmes (paragraph 13)

- (i) Add text at the end of subparagraph (a) and modify the existing subparagraph (b) as follows:
- (a) ***... Developing country Members shall be exempted from the condition that disadvantaged regions must constitute a clearly designated contiguous geographical area with a definable economic and administrative identity.***
- (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the ***fixed and unchanging historical*** base period, ***which shall be notified***, other than to reduce that production. ***Developing country Members who have not previously made use of this type of payment, and thus have not notified, shall not be precluded from establishing an appropriate base period¹³, which shall be fixed and unchanging and shall be notified.***

Text of footnote 13: *Developing countries Members may not have the capacity to fully assess the impact of innovation in their agricultural policies. Accordingly, the base period of a time-limited experimental or pilot programme may not be taken as the fixed and unchanging base period for the purposes of this paragraph.*

- (ii) Add text at the end of subparagraph (a) and modify the existing subparagraphs (b) and (f) as follows:
 - (a) ... *Developing countries will be exempt from the condition that the disadvantaged region be a clearly designated contiguous geographical area with a definable economic and administrative identity.*
 - (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the *fixed and unchanging historical* base period, *which shall be notified*, other than to reduce that production. *Developing countries should not be precluded from utilizing this kind of payment in the future in the event that no base period was notified. An appropriate base period which shall fixed and unchanging and shall be established and notified.*
 - (f) The payments shall be limited to the extra costs or loss of income involved in undertaking agricultural production (*including livestock production*) in the prescribed area.
 - (iii) Add text at the end of subparagraph (a) as follows:
 - (a) ... *Developing country Members shall be exempted from the condition that disadvantaged regions must constitute a clearly designated contiguous geographical area with a definable economic and administrative identity.*
 - (iv) Modify the existing subparagraph (b) as follows:
 - (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the *fixed and unchanging historical* base period, *which shall be notified*, other than to reduce that production.
-